

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL JAMES HICKS,

Plaintiff,

v.

P. KAHLON, et al.,

Defendants.

No. 2:23-cv-2830 KJM CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a California prisoner proceeding pro se with a civil action. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has requested leave to proceed in forma pauperis. It has already been determined by the Ninth Circuit that plaintiff has “struck out” under 28 U.S.C. § 1915(g). Hicks v. Yeh, No. 23-15486 (9th Cir. May 31, 2023). Therefore, plaintiff can only proceed in forma pauperis if he adequately alleges in his complaint that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

In his December 1, 2023, complaint, plaintiff does not explicitly allege that he is “under imminent danger of serious physical injury. He does complain about the treatment he has received over the course of four-and-a-half years for a benign tumor on his left femur. His treatment status at the time he filed his complaint is not entirely clear, but it does appear that, at that point, the tumor had not been removed, plaintiff’s ability to use a walker had been revoked,

1 plaintiff had been denied supervised physical therapy, and denied referral to an orthopedic  
2 oncologist. It appears that plaintiff had been provided access to a physical therapist through  
3 video conference. It is not clear whether, at that point, plaintiff was receiving pain medication.

4 With respect to the treatment denied, plaintiff fails to point to facts indicating that the lack  
5 of treatment manifests an imminent danger of serious physical injury. The same goes for the use  
6 of a walker. The court assumes a walker helps plaintiff with his mobility at his prison, but  
7 plaintiff does not show that denial of access to one makes a serious physical injury imminent.

8 For the foregoing reasons, the court will recommend that plaintiff's motion to proceed in  
9 forma pauperis be denied and that plaintiff be required to pay the filing fee.

10 In accordance with the above, IT IS HEREBY RECOMMENDED that plaintiff's motion  
11 to proceed in forma pauperis (ECF No.2) be denied and that plaintiff be ordered to pay the  
12 \$405.00 filing fee for this action.

13 These findings and recommendations are submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
15 after being served with these findings and recommendations, plaintiff may file written objections  
16 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
17 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
18 time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
19 Cir. 1991).

20 Dated: April 29, 2024

21   
22 CAROLYN K. DELANEY  
23 UNITED STATES MAGISTRATE JUDGE  
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